

## 1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

4 IN RE: LITHIUM ION BATTERIES) NO. C 13-MD-2420 YGR  
ANTITRUST LITIGATION )

5 ) MDL NO. 2420

6 ) PAGES 1 - 40

7 OAKLAND, CALIFORNIA

8 MONDAY, FEBRUARY 28, 2017

9 **TRANSCRIPT OF PROCEEDINGS**10 **APPEARANCES:**11 **FOR DIRECT PURCHASER  
PLAINTIFFS:**12 **COTCHETT PITRE & MCCARTHY LLP**13 **840 MALCOLM ROAD**14 **SAN FRANCISCO AIRPORT CENTER**15 **BURLINGAME, CALIFORNIA 94010**16 **BY: DEMETRIUS X. LAMBRINOS, ESQUIRE**17 **FOR INDIRECT PURCHASER  
PLAINTIFFS:**18 **LIEFF, CABRASER, HEIMANN &**19 **BERNSTEIN**20 **275 BATTERY STREET, 30TH FL.**21 **SAN FRANCISCO, CALIFORNIA 94111**22 **BY: BRUCE SIMON, ESQUIRE**23 **RICK SAVERI, ESQUIRE**24 **FURTHER APPEARANCES ON NEXT PAGE.**25 **REPORTED BY: KATHERINE WYATT, CSR NO. 9866**26 **PROCEEDINGS REPORTED BY ELECTRONIC/MECHANICAL STENOGRAPHY;  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.**

**A P P E A R A N C E S (CONT'D.)**

**ALSO FOR INDIRECT PURCHASER PLAINTIFFS:**

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**FOR TOSHIBA  
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**BY: VANESSA G. JACOBSEN, ATTORNEY AT LAW**

**NATHAN P. EIMER, ESQUIRE**

**FEBRUARY 28, 2017**

**2:00 O'CLOCK P.M.**

**P R O C E E D I N G S**

**THE CLERK:** CALLING CIVIL ACTION 13-MD-2420, IN RE:  
LITHIUM BATTERIES ANTITRUST LITIGATION.

**THE COURT:** ALL RIGHT. WE'LL START WITH THE  
PLAINTIFFS.

MR. FRIEDMAN, GOOD AFTERNOON.

**MR. FRIEDMAN:** GOOD AFTERNOON, YOUR HONOR. JEFF  
FRIEDMAN FOR THE IPP'S.

**MR. LAMBRINOS:** DEMETRIUS LAMBRINOS, IPP'S, COTCHETT,  
PITRE & MCCARTHY.

**MR. EMIER:** GOOD AFTERNOON, YOUR HONOR. WE'RE  
RELATIVELY NEW IN THE CASE. NAT EIMER ON BEHALF OF THE LG CHEM  
DEFENDANTS.

**MS. JACOBSEN:** AND VANESSA JACOBSEN ALSO ON BEHALF OF  
THE LG CHEM DEFENDANTS.

**THE COURT:** COME TO THE MIC, PLEASE.

**MS. JACOBSEN:** VANESSA JACOBSEN ALSO ON BEHALF OF THE  
LG CHEM DEFENDANTS.

**THE COURT:** OKAY.

**MS. VAALA:** LINDSEY VAALA ON BEHALF OF THE MAXWELL  
DEFENDANTS.

**THE COURT:** LINDSEY VAALA?

**MS. VAALA:** YES.

1           **THE COURT:**   GREAT.   OKAY.

2           **MR. PRINGLE:**   GOOD AFTERNOON, YOUR HONOR.   ROBERT  
3 PRINGLE ON BEHALF OF NEC CORPORATION.   WITH ME IS DANA  
4 COOK-MILLIGAN ON BEHALF OF NEC CORPORATION.

5           **THE COURT:**   OKAY.

6           SO I HAVE A CARD FOR HEATHER BURKE ON BEHALF OF TOSHIBA.  
7 JUST WATCHING?

8           **MS. BURKE:**   YES, YOUR HONOR.

9           **THE COURT:**   I SEE MR. PITRE IN THE BACK?   NO?

10          ALL RIGHT.   SO, MR. FRIEDMAN, I AM GOING TO ASK YOU TO WALK  
11 THROUGH THESE WITH ME.

12          **MR. FRIEDMAN:**   SURE, YOUR HONOR.

13          **THE COURT:**   IN PRINCIPLE I AM DELIGHTED THAT PEOPLE ARE  
14 RESOLVING.   I HAVE BEEN WORKING ON CLASS CERT MOTIONS, BUT, YOU  
15 KNOW, THERE ARE SOME INTERESTING ISSUES IN THIS CASE.

16          WHAT I'M TRYING TO FIGURE OUT -- I HAVE SOME QUESTIONS -- IS  
17 HOW ALL OF THIS -- HOW ALL OF THIS REALLY IS GOING TO ULTIMATELY  
18 WORK.   IT'S AN MDL, SO OBVIOUSLY I HAVE FLEXIBILITY IN HOW TO  
19 DEAL WITH IT.   BUT IT SEEMS TO ME THAT IT COULD CREATE ALL SORTS  
20 OF PROBLEMS GIVEN THAT IT IS PIECEMEAL.

21          AND IT COULD CREATE PROBLEMS IN TERMS OF VARIOUS CLASS  
22 DEFINITIONS.   I'VE GOT SONY, YOU KNOW, WITH ONE SET.   I'VE GOT  
23 OTHER PEOPLE COMING AND GOING.   I DON'T KNOW HOW ONE REALLY  
24 NOTIFIES A CLASS THAT SOMETHING IS HAPPENING, BUT WE HAVE  
25 ABSOLUTELY NO IDEA WHAT YOU ARE GOING TO GET.

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1 SO IT'S JUST -- IT IS NOT OBVIOUSLY A TRADITIONAL CASE WHERE  
2 WE HAVE A PACKAGE FOR A SINGLE CASE, AND SO I CAN EVALUATE THAT  
3 IN VERY TRADITIONAL WAYS. SO I'VE, YOU KNOW, CREATED SOME CHARTS  
4 TRYING TO FIGURE OUT HOW THINGS WORK. BUT GIVEN BOTH SIDES --  
5 AND I'D LIKE TO HEAR FROM BOTH SIDES -- THE EXPERIENCES THAT YOU  
6 HAD IN THOSE MDL CASES, YOU KNOW, HOW ALL OF THIS IS REASONABLY  
7 GOING TO COME TOGETHER AT SOME, YOU KNOW, POINT IN -- UNKNOWN  
8 POINT IN THE FUTURE.

9 SO ENLIGHTEN ME.

10 **MR. FRIEDMAN:** SO, YOUR HONOR, I COMPLETELY AGREE THAT  
11 IT IS NOT A TRADITIONAL CASE THAT THE COURT FACES OR COURTS  
12 USUALLY FACE. BUT IT IS A TRADITIONAL ANTITRUST, MULTI DEFENDANT  
13 CLASS ACTION MDL IN THAT THE COURT IS BEING PRESENTED WITH FAIRLY  
14 TYPICAL -- I'M NOT SAYING "IDENTICAL" -- BUT FAIRLY TYPICAL  
15 PARADIGM OF WHAT HAPPENS IN THE CASES.

16 AND LET ME GIVE A LITTLE BACKGROUND ON THAT. AND, OF  
17 COURSE, THE COURT CAN INTERRUPT ME AND YOU CUT ME OFF FREELY IF  
18 I'M GIVING YOU TOO MUCH INFORMATION.

19 BUT TYPICALLY WHAT HAPPENS, YOUR HONOR, IS THAT YOU HAVE A  
20 SERIES OF SETTLEMENTS. AND FROM THE PLAINTIFFS' PERSPECTIVE --  
21 AND WE'LL GET TO THE DIFFERENT CLASS DEFINITION ISSUES, BECAUSE I  
22 DO THINK THAT THAT IS SOMEWHAT OF A MORE OF A THORNIER ISSUE, BUT  
23 IT IS ONE THAT WE DEAL WITH.

24 TYPICALLY WHAT HAPPENS, YOUR HONOR, WHAT END UP HAPPENING IS  
25 YOU GET A SERIES OF SETTLEMENTS. AND ONE OF TWO THINGS HAPPEN.

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1 EITHER A, FROM THE PLAINTIFFS' PERSPECTIVE YOU REACH CRITICAL  
2 MASS IN TERMS OF THE AMOUNTS OF DAMAGES OR THE AMOUNT, THE SIZE  
3 OF THE POT TO DISTRIBUTE THAT IT MAKES ECONOMIC SENSE TO  
4 DISTRIBUTE AND NOT WAIT FOR YEARS AND YEARS AND YEARS DOWN THE  
5 ROAD TO SEE IF EVERYONE SETTLES OR IF THERE'S GOING TO BE A TRIAL  
6 AN APPEAL, ET CETERA.

7 AND THAT, THEREFORE, YOUR HONOR, IS ONE WAY THAT IT IS DONE  
8 IS THAT WE COME TO THE COURT AND SAY HAVE:

9 "WE HAVE 65 MILLION OR WE HAVE A HUNDRED MILLION," OR A  
10 CERTAIN NUMBER THAT WE SAY: "IT MAKES SENSE TO DISTRIBUTE  
11 TO THE CLASS MEMBERS."

12 AND YOU MAY HAVE DEFENDANTS THAT ARE OUT THERE IF THE COURT  
13 CERTIFIES THE CASE, OR IF THE COURT DOESN'T CERTIFY THE CASE,  
14 THAT WILL THEN HAVE TO DEAL WITH THOSE SORT OF FACTORS ON THE  
15 GROUND AS THEY EVOLVE.

16 WE'RE GETTING CLOSE, YOUR HONOR, TO THAT CRITICAL MASS  
17 WHERE, AGAIN, THE COURT DOES NOT HAVE TO ORDER OR AGREE FOR  
18 DISTRIBUTION, BUT WE'RE GETTING REALLY CLOSE TO THE POINT WHERE  
19 IT MAY MAKE SENSE, WHICH I CAN TALK TO YOU ABOUT A LITTLE BIT, AS  
20 WELL.

21 NOW, WITH RESPECT TO THE ISSUE ABOUT THE DIFFERENT CLASS  
22 DEFINITIONS, SO WHAT WE'RE TALKING ABOUT REALLY RIGHT NOW IS  
23 DISTRIBUTION. AND THE CLAIM FORM THAT WE'RE DEALING WITH,  
24 BECAUSE WE DO HAVE A SONY SETTLEMENT THAT INCLUDES MORE PRODUCTS  
25 BECAUSE IT INCLUDES THE PRISMATIC AND POLYMER AS OPPOSED TO

1 LIMITED TO CYLINDRICAL.

2 YOU'LL HAVE 19-AND-A-HALF-MILLION APPROXIMATELY, THAT IS  
3 DESIGNATED FOR THOSE PEOPLE CAN MAKE A CLAIM THAT DID NOT BUY A  
4 CYLINDRICAL PRODUCT, BUT DID BUY A PRISMATIC OR POLYMER PRODUCT.

5 AND SO THOSE PEOPLE WILL HAVE AVAILABLE TO THEM A CLAIM TO  
6 UPWARDS OF THAT \$19-AND-A-HALF MILLION.

7 THE CYLINDRICAL, JUST FOR THE COURT'S INFORMATION, IS IN  
8 TERMS OF THE SCOPE OF WHAT WE'RE TALKING ABOUT, CYLINDRICAL MAKES  
9 UP IN TERMS OF THE PRODUCTS AT ISSUE -- AND DON'T HOLD ME TO THE  
10 EXACT, BECAUSE MY RECOLLECTION LOOKING AT MARKET INFORMATION,  
11 CYLINDRICAL PRODUCTS CAN MAKE UP BETWEEN 40 AND 60 PERCENT OF  
12 EFFECTIVELY THE PRODUCTS AT ISSUE.

13 AND, PREDOMINANTLY, YOUR HONOR, THAT COMES IN LAPTOP  
14 COMPUTERS. THAT'S A HUGE PERCENTAGE. AND SO IF YOU THINK ABOUT  
15 IT, YOUR HONOR, WHEN YOU'RE TALKING ABOUT THE PRACTICAL  
16 APPLICATION, IS SOMEONE GOING TO HAVE BOUGHT A CELL PHONE THAT  
17 HAS A PRISMATIC IN IT THAT DID NOT BUY A COMPUTER IN THE CLASS  
18 PERIOD THAT WE HAVE, THE TEN-YEAR PERIOD, APPROXIMATELY.

19 IT'S POSSIBLE. IS IT LIKELY THAT THAT'S GOING TO MAKE UP A  
20 LARGE PERCENTAGE OF THE CLAIMS? PROBABLY NOT. SO WHAT YOU ARE  
21 GOING TO HAVE MOST LIKELY, YOUR HONOR, IN PRACTICAL TERMS IS THAT  
22 YOU ARE GOING TO HAVE CYLINDRICAL PURCHASERS THAT ARE GOING TO  
23 HAVE THE RIGHT TO MAKE A CLAIM TO THE ENTIRE BODY OF THE POOL OF  
24 MONEY.

25 AND THEN, YOU ARE GOING TO HAVE SOME PEOPLE WHO ONLY BOUGHT

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1 A CELL PHONE OR AN IPAD, FOR EXAMPLE, THAT HAD A PRISMATIC OR A  
2 POLYMER, BUT NOT A CYLINDRICAL THAT WILL GET A PRO RATA SHARE OF  
3 WHAT EXISTS IN THAT 19.5 MILLION POT.

4 AND THAT WILL BE DONE BY A CLAIM FORM. IN THE CLAIM FORM  
5 THAT WE'VE SUBMITTED THE INDIVIDUALS WILL CHECK THE BOXES OF THE  
6 TYPES OF PRODUCTS THAT THEY PURCHASED.

7 AND IF THEY EXCLUSIVELY CHOOSE A CELL PHONE, FOR EXAMPLE,  
8 THAT WERE NOT CYLINDRICAL, THEY WILL ONLY GET A PRO RATA SHARE OF  
9 THE \$19.5 MILLION.

10 IF THEY CHECK BOTH BOXES, SOMETHING THAT HAD CYLINDRICAL AND  
11 SOMETHING THAT HAD A PRISMATIC, THEY GET ACCESS AND A PRO RATA  
12 SHARE TO THE TOTALITY OF THE POOL.

13 NOW, IN -- DO YOU HAVE ANY QUESTIONS FOR ME AT THIS POINT?

14 **THE COURT:** NOT SO FAR.

15 **MR. FRIEDMAN:** OKAY. NOW, THE COURT ABSOLUTELY PUTS  
16 THE COURT'S FINGER ON WHAT IS A VERY COMMON BUT BEDEVILING ISSUE  
17 THAT COMES UP IN CLASS ACTIONS ALL THE TIME, WHICH IS:

18 "WELL, HOW MUCH DO YOU GET? HOW MUCH IS SOMEONE GOING  
19 TO GET FROM THIS?"

20 NOW, THE ISSUE IS DIFFICULT IN SEVERAL WAYS THAT I WRESTLE  
21 WITH ALL THE TIME AND HAVE TRIED -- AND I'LL TELL YOU SOMETHING  
22 THAT WE'RE TRYING TO DO THAT'S SORT OF ON THE FOREFRONT OF THIS  
23 ISSUE. THE ISSUE IS: WELL, THE MORE CLAIMANTS YOU HAVE, THE  
24 LESS AMOUNT OF MONEY PRO RATA YOU ARE GOING TO GET.

25 AND SO HOW DO WE KNOW HOW MANY CLAIMANTS YOU ARE GOING TO

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1 HAVE? WE CAN DO PROJECTIONS. WE CAN LOOK AT HISTORICALS. WE  
2 CAN LOOK AT -- THERE'S VARIOUS VARIABLES. BUT THERE'S REALLY BAD  
3 INFORMATION IN TERMS OF PREDICTION OTHER THAN THE FACT THAT WE  
4 KNOW IF YOU HAVE TO FILL OUT A FORM AND IT'S REALLY COMPLICATED,  
5 YOUR CLAIMS RATE IS GOING TO BE LOWER.

6 SO WHAT DO WE DO? WE TRY TO HAVE THE LEAST AMOUNT OF  
7 INFORMATION REQUIRED. IF YOU HAVE TO SUBMIT RECEIPTS IT DRIVES  
8 IT DOWN. THERE'S ALL THESE THINGS THAT ARE VARIABLES THAT DRIVE  
9 CLASS MEMBER CLAIMS RATES DOWN. EVEN WHEN YOU MAKE IT EASY IT'S  
10 NOT A HIGH RESPONSE RATE, WHICH IS EXTREMELY, I THINK, TROUBLING  
11 POLICY-WISE. IT'S TROUBLING IN TERMS OF PERCEPTIONS OF CLASS  
12 ACTIONS.

13 THERE'S A LOT OF PROBLEMS WHEN YOU HAVE LOW CLAIMS RATES  
14 BECAUSE THE LAWYERS ARE THE ONLY ONES BENEFITING. THAT'S THE  
15 ARGUMENT. I'M NOT GOING TO TAKE THAT ON RIGHT NOW WITH THE  
16 COURT.

17 SO WE'RE SENSITIVE TO THAT. SO WHAT DO WE DO? WHAT DO WE  
18 DO AND WHAT HAVE WE BEEN TRYING TO DO?

19 SO YOU WILL I'LL GIVE YOU CLEARLY FACTS IN THIS CASE. WE  
20 HAVE 15.8-MILLION EMAIL ADDRESSES THAT WE HAVE GOTTEN FROM  
21 SOURCES SUCH AS DELL AND HP, BECAUSE THEY ARE OBVIOUSLY COMPUTER  
22 MANUFACTURERS AND MAKE UP A LARGE PERCENTAGE OF THE POTENTIAL  
23 PRODUCTS AT ISSUE.

24 WE HAVE SUBPOENAED THEM AND RECEIVED THAT INFORMATION FROM  
25 OUR CASE THAT I LED IN ODD, AND HAVE IMPORTED THAT CONTACT

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1 INFORMATION HERE.

2 WE'VE ALSO ASKED FOR RETAILER INFORMATION.

3 SO NOW, AGAIN, THAT 15.8 MILLION EMAIL ADDRESSES, WHAT DOES  
4 THAT DO? WELL, FIRST OF ALL, YOU HAVE TO GO THROUGH AND FIND OUT  
5 HOW MANY OF THOSE EMAIL ADDRESSES ARE STILL GOOD? AND SO THERE'S  
6 A WINNOWING. I DON'T WANT TO REPRESENT TO THE COURT THAT ALL  
7 15.8 MILLION ARE GOOD ADDRESSES AND ARE GOING TO BE ABLE TO GET  
8 MONEY TO THEM.

9 WE STILL FACE THE PROBLEM. SO WHAT? YOU HAVE 15.8 MILLION  
10 EMAIL ADDRESSES.

11 SO WHAT I DID AND MY FIRM DID AND HAVE DONE IT FOR THE FIRST  
12 TIME IN OUR MILK ANTITRUST CASE IN FRONT OF JUDGE WHITE, WHICH IS  
13 WE FOUND A COMPANY IN SAN FRANCISCO THAT'S -- THE COMPANY'S NAME  
14 IS SIPREE. AND --

15 **THE COURT:** HOW DO YOU SPELL THAT?

16 **MR. FRIEDMAN:** S-I-P-R-E-E. AND THIS WAS BORNE OUT OF  
17 FRUSTRATION WITH THIS VERY ISSUE IN ODD WHERE I HAD MULTI  
18 MILLIONS OF CLASS MEMBERS. AND I SAID:

19 "HOW ARE WE GOING TO GET THEM THE MONEY? WE HAVE OVER  
20 \$125,000,000 IN SETTLEMENTS. HOW DO WE GIVE THEM THE  
21 MONEY?"

22 SO I PICKED UP THE PHONE, CALLED PAYPAL, AND SAID:

23 "IF I GIVE YOU AN HUNDRED MILLION DOLLARS AND CAN  
24 DISTRIBUTE -- CAN YOU JUST DISTRIBUTE A HUNDRED MILLION  
25 DOLLARS THROUGH PAYPAL?

1 "CAN'T DO IT. OUR INFRASTRUCTURE ISN'T BUILT FOR IT.  
2 WE CAN'T DO IT."

3 SO I THEN FOUND A COMPANY CALLED "SIPREE." SIPREE IS  
4 DESIGNING AND HAS A SYSTEM THAT WITH AN EMAIL ADDRESS, YOUR  
5 HONOR, THAT THEY ARE ABLE TO FIRST GIVE THAT EMAIL RECIPIENT AN  
6 OPTION TO DIRECT MONEY INTO VARIOUS PAYMENT FORMS. THEY CAN OPEN  
7 A PAYPAL ACCOUNT. THEY CAN USE AN EXISTING ACCOUNT THAT THEY  
8 HAVE.

9 THERE'S ALSO A WAY IN WHICH WE BELIEVE WE'RE ABLE TO GET  
10 MONEY EVEN IF PEOPLE DON'T RESPOND, YOUR HONOR. TO FORCE MONEY  
11 TO THEM BY YOUR HONOR GETTING \$5 FROM AMAZON, AND YOU SPEND IT  
12 ANY WAY YOU WANT TO. IT'S NOT A COUPON. YOU CAN MY MILK WITH  
13 IT. YOU CAN BUY ANYTHING YOU WANT WITH IT.

14 AND IT'S FORCED, AND IT SHOWS UP IN YOUR EMAIL, AND IT SAYS:

15 "HERE'S \$5 FOR YOU TO SPEND ON AMAZON."

16 AND SO THIS IS WHAT WE'RE -- WE'RE DOING IT IN THE MILK  
17 ANTITRUST CASE IN FRONT OF JUDGE WHITE. WE STARTED, YOUR HONOR,  
18 WITH A 200,000 OUT OF ABOUT 30 MILLION HOUSEHOLDS' CLAIMS.

19 AND MR. EIMER IS ONE OF THE DEFENSE COUNSELS IN THE CASE  
20 AND, SO HE'S FAMILIAR WITH THIS.

21 SO THERE WAS 200,000 THAT WAS COMING ONLINE THROUGH EFFORTS  
22 OF SOCIAL MEDIA THAT, YOU KNOW, WE HAVE TO INVEST AND PAY FOR.  
23 WE NOW HAVE THE CLAIMS. THERE ARE OVER FOUR MILLION CLAIMS, YOUR  
24 HONOR. AND WE ARE GOING TO ELECTRONICALLY DISTRIBUTE TO -- WE  
25 MAKE AS LONG AS THOSE FORMS ARE GOOD -- LET'S JUST SAY THEY

1 ARE -- WE'RE GOING TO ELECTRONICALLY DISTRIBUTE THE ENTIRE BODY  
2 ELECTRONICALLY TO THOSE 4 MILLION CLAIMANTS.

3 AND THE AVERAGE DISTRIBUTION THERE WILL BE SOMEWHERE BETWEEN  
4 FIVE AND TEN DOLLARS. AND BESIDES THE ABILITY TO GET THE MONEY  
5 TO THE PEOPLE THIS WAY, WE ALSO ARE TAKING THINGS ELECTRONICALLY,  
6 BECAUSE OLD SCHOOL WHEN WE HAD TO SNAIL MAIL A POSTCARD CHECK WE  
7 WERE GETTING CHARGED -- DEPENDS ON THE NEGOTIATION -- SOMEWHERE  
8 BETWEEN 25 CENTS AND 50 CENTS A CHECK, A POSTCARD CHECK, WHICH  
9 THERE'S COSTS AND POSTAGE ASSOCIATED WITH IT. BUT IF WE HAD TO DO  
10 THAT FOR FOUR TO 10 MILLION PEOPLE IF WE WERE LUCKY ENOUGH TO GET  
11 ADDRESSES -- VERY FEW PEOPLE WERE WILLING T GIVE PHYSICAL  
12 ADDRESSES -- THAT WOULD COST THREE, FOUR, \$5 MILLION JUST TO DO.

13 SO WE'RE DRIVING THAT DOWN, AND WE'RE ALSO FACILITATING THE  
14 ABILITY TO DO IT. SO WE ARE GOING TO TRY AND PROPOSE DOING THE  
15 EXACT SAME THING HERE, YOUR HONOR. WE'RE DOING IT AS A TEST CASE  
16 IN MILK.

17 I'M HOPING THERE'S NOT BUMPS, YOU KNOW, BUT IT IS NEW  
18 TECHNOLOGY. AND --

19 **THE COURT:** AND WHAT DOES JUDGE WHITE HAVE TO SAY ABOUT  
20 IT?

21 **MR. FRIEDMAN:** WELL, I'M WAITING FOR FINAL APPROVAL AS  
22 WE SPEAK. JUDGE WHITE DID NOT -- IN THE FINAL APPROVAL HEARING  
23 HE HAD -- HIS REAL CONCERN -- WELL, I DON'T WANT TO SPEAK FOR  
24 WHAT HIS REAL CONCERN WAS. ONE OF HIS -- THE COURT'S ARTICULATED  
25 CONCERN WAS AT THE TIME WAS SO FEW PEOPLE WOULD GET THE

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1 DISTRIBUTION OF MONEY BECAUSE WHEN WE WENT IN FOR THE FINAL  
2 APPROVAL, THERE WAS ONLY 200,000 CLAIMANTS AT THE TIME.

3 AND WE'VE NOW CONTINUOUSLY SUBMITTED TO JUDGE WHITE UPDATES  
4 WITH WHAT HAS HAPPENED WITH SOCIAL MEDIA LEARNING ON HOW TO GET  
5 PEOPLE AWARE OF THESE SMALL DOLLAR CLAIMS.

6 AND THAT'S KEY, THE AWARENESS OF IT AND THE EASE TO WHICH  
7 YOU CAN PUT IN AN E-MAIL ADDRESS AND SAY:

8 "I'M A CLAIMANT," AND GET THE MONEY. AND WE'RE TRYING  
9 TO BREAK DOWN THOSE BARRIERS.

10 **THE COURT:** SO DO I NEED TO SANCTION THE DISTRIBUTION  
11 PROCESS AT PRELIMINARY APPROVAL STAGE OR IS IT ENOUGH THAT IT IS  
12 PRO RATA?

13 **MR. FRIEDMAN:** YOU DO NOT NEED TO SANCTION THE PROCESS  
14 YET. YOU CERTAINLY WILL NEED TO WHEN YOU ORDER DISTRIBUTION.  
15 THAT'S CLEAR. WE WILL BE ASKING FOR APPROVAL OF THAT. AND PRO  
16 RATA CLEARLY IS IN TERMS OF THE PROPOSAL IS A FAIR, REASONABLE,  
17 YOU KNOW, ALLOCATION. IT'S SOMETHING THAT IS VERY CUSTOMARY AND  
18 STANDARD.

19 **THE COURT:** WELL, LET'S MOVE TO THE MONEY.

20 **MR. FRIEDMAN:** OKAY.

21 **THE COURT:** UNLESS YOU WANT TO SAY -- I MEAN, IT'S  
22 VERY HELPFUL FOR ME. BUT IF THERE'S ANYTHING ELSE I DON'T MEAN  
23 TO CUT YOU OFF.

24 **MR. FRIEDMAN:** NO. NO. I DIDN'T WANT TO GIVE YOU MORE  
25 THAN YOU NEEDED, BUT IT IS A VERY TOPICAL ISSUE AND I UNDERSTAND

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1 COURT'S HAVING CONCERNS OR WRESTLING WITH THESE ISSUES.

2           **THE COURT:** SO JUST AGAIN FOR MY OWN EDIFICATION AND  
3 COMPARISON, I UNDERSTAND WHAT YOU'RE DOING WITH THE MILK CASE.  
4 BUT WHAT ABOUT LCD? HOW DID IT WORK THERE? CRT, HOW DID IT WORK  
5 THERE? AND I GUESS SRAM WOULD BE THE THIRD. I DON'T KNOW IF  
6 JUDGE DONATO HAS ONE IN FRONT OF HIM. AND PERHAPS THIS IS  
7 SOMETHING THAT WE AS JUDGES WILL ALL TALK ABOUT TOGETHER.

8           BUT, ANYWAY, IT WOULD BE HELPFUL TO UNDERSTAND THE LAY OF  
9 THE LAND AT LEAST WITH RESPECT TO THE ANTITRUST CASES IN THIS  
10 DISTRICT.

11           **MR. FRIEDMAN:** SO IF THE COURT'S ASKING ABOUT  
12 DISTRIBUTION IN THOSE CASES? MY UNDERSTANDING IS IT WAS OLD  
13 SCHOOL. IT WAS --

14           **THE COURT:** AND SO HOW -- WHAT WAS THE -- DID YOU END  
15 UP DOING MULTIPLE DISTRIBUTIONS, THEN? I MEAN, HOW DID YOU --  
16 RIGHT? BECAUSE IF YOU ARE SENDING OUT CHECKS AND PEOPLE AREN'T  
17 CASHING THEM, WAS IT GOING STRAIGHT TO A CY PRES? AND WHAT WAS  
18 THE AMOUNT? I MEAN, WHAT ARE WE LOOKING AT IN THESE KINDS OF,  
19 YOU KNOW, HUGE ELECTRONIC CASES?

20           **MR. FRIEDMAN:** SO I HAVE NOT BEEN THE IPP COUNSEL IN  
21 THOSE CASES, SO I'M GOING TO GIVE YOU -- I WANT TO STOP SHORT OF  
22 GIVING YOU MORE SPECIFICS THAN THE FOLLOWING. HERE'S MY  
23 UNDERSTANDING.

24           MY UNDERSTANDING IS THAT THESE WERE CERTAINLY THE DAMAGES  
25 FOR IPP'S FOR CONSUMER PURCHASERS IN THOSE CASES WERE IN THE

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1 ORDER OF, YOU KNOW, BETWEEN \$10 AND \$80. SO WE'RE NOT TALKING  
2 ABOUT THOUSANDS OF DOLLARS.

3 SO THE DOLLAR DAMAGES WERE CERTAINLY IN THE 80 TO -- 50 TO  
4 80 TO \$100. THEY WERE NOT THOUSANDS AND THOUSANDS OF DOLLARS.

5 SO ON AVERAGE YOU WERE HAVING SMALL DOLLAR FIGURES PER  
6 PERSON. THAT'S NUMBER ONE.

7 NUMBER TWO, YOUR HONOR, I BELIEVE CHECKS WERE SENT SO IT WAS  
8 NOT ELECTRONIC. THAT'S I'M VERY CONFIDENT OF. THE CHECKS WERE  
9 SENT. I BELIEVE, YOUR HONOR, WHAT YOU HAD IN THIS ONE -- I'M NOT  
10 POSITIVE ON -- BUT WHAT YOU ENDED UP HAVING, YOUR HONOR, WAS TO  
11 THE EXTENT YOU HAD SMALL NUMBERS ISSUES BECAUSE OF THE ADDRESSES  
12 AND THE CLAIMS, THOSE PEOPLE ENDED UP GETTING FAIRLY SIZABLE  
13 CHECKS BECAUSE YOU ENDED UP HAVING A LARGE AMOUNT OF MONEY TO  
14 DISTRIBUTE TO A SMALL NUMBER OF PEOPLE.

15 AND SO I DON'T KNOW IF THE CHECK SIZE ENDED UP BEING SEVERAL  
16 HUNDREDS OF DOLLARS OR EVEN \$1,000 BECAUSE THE EXCESS ENDED UP  
17 GETTING SENT TO THOSE PEOPLE WHO CLAIMED AND CASHED.

18 I CANNOT TELL YOU WHETHER THERE WAS A REDISTRIBUTION PLAN  
19 THAT OCCURRED. IT'S TYPICAL THAT A REDISTRIBUTION OCCURS FOR  
20 UNCLAIMED OR UNCASHED CHECKS. THAT IS SOMETHING THAT HAPPENS,  
21 CLEARLY. BUT I DON'T KNOW THE SPECIFICS OF THIS.

22 **THE COURT:** DOES ANYBODY ELSE IN THE COURTROOM KNOW  
23 ANYTHING MORE?

24 OUT THERE?

25 **MR. SIMON:** I DIDN'T MAKE AN APPEARANCE, YOUR HONOR.

1           **THE COURT:** I KNOW.

2           **MR. SAVERI:** NOR DID I, YOUR HONOR.

3           **THE COURT:** I KNOW. YOU ARE WELCOME TO COME UP. JUST  
4 STATE YOUR NAME.

5           **MR. SIMON:** BRUCE SIMON, CO-LEAD ON BEHALF OF THE  
6 DIRECTS. I WAS ALSO CO-LEAD IN LCD ON THE DIRECT SIDE.

7           **THE COURT:** SPEAK UP MR. SIMON. COME TO THE MIC.

8           **MR. SIMON:** THE ISSUES ON THE DIRECT SIDE IN LCD, CRT  
9 AND SRAM ARE DIFFERENT THAN THE INDIRECT SIDE BECAUSE IT'S A MORE  
10 CONFINED GROUP OF PEOPLE.

11           **THE COURT:** CORRECT.

12           **MR. SIMON:** WE HAVE AN IDENTIFIED LIST. THERE WAS, AS  
13 I RECALL, IN LCD ON THE DIRECT SIDE ONLY ONE ULTIMATE  
14 DISTRIBUTION, ALTHOUGH THERE WERE SETTLEMENTS IN PIECEMEAL  
15 FASHION. AND THEY DID WAIT, AS MR. FRIEDMAN SUGGESTED, UNTIL WE  
16 HAD CRITICAL MASS AND WE HAD ALL DEFENDANTS IN THAT PARTICULAR  
17 CASE EXCEPT FOR TOSHIBA AGAINST WHOM WE WENT TO TRIAL.

18           **THE COURT:** AND THEN, DID YOU DO THE DISTRIBUTION  
19 BEFORE OR AFTER THE TRIAL?

20           **MR. SIMON:** WE DID THE DISTRIBUTION -- I THINK IN THAT  
21 CASE BECAUSE OF THE TIMING WE DID THE DISTRIBUTION AFTER THE  
22 TRIAL, BECAUSE THEN WE ALSO SETTLED WITH TOSHIBA AND THE ENTIRE  
23 CASE WAS SETTLED AFTER TRIAL.

24           **THE COURT:** I SEE.

25           **MR. SIMON:** JUDGE ILLSTON, AND I BELIEVE JUDGE WILKEN



1 IN SRAM AND I BELIEVE JUDGE CONTI IN CRT AND JUDGE TIGAR, AS I  
2 BELIEVE YOU ARE, ARE INTERESTED IN EFFICIENCY. SO ONE OF THE  
3 ADVANTAGES OF WAITING TO HAVE ENOUGH MONEY TO DISTRIBUTE IS ALSO  
4 THAT YOU ONLY DO THE NOTICE ONCE.

5 **THE COURT:** CORRECT.

6 **MR. SIMON:** SO ON THE DIRECT SIDE IN LCD WE DID NOTICE,  
7 COLLECTED ALL THE NAMES. I FORGET HOW MANY THERE WERE. BUT, YOU  
8 KNOW, 250,000 OR SO NAMES ON THE DIRECT SIDE, WHICH IS SMALLER.

9 ONCE WE DID THAT AND WE WENT THROUGH, YOU KNOW, A COUPLE OF  
10 ANNOUNCEMENTS OF SETTLEMENTS THAT BECAME FAIRLY ROTE BECAUSE WE  
11 HAD EVERYTHING ELECTRONICALLY AND IT WAS DIRECT CONTACTS WITH  
12 THEM EITHER BY DIRECT MAIL, POSTCARD OR AND/OR EMAIL. AND THEN,  
13 YOU ALSO KNEW WHO OPT-OUTS WOULD BE BY THAT POINT.

14 SO THERE IS SOME BENEFITS TO HAVING, YOU KNOW, ANNOUNCE IT  
15 AS THEY COME ALONG, BUT NOT DO THEM ALL INDIVIDUALLY, BOTH  
16 ECONOMICALLY AND EFFICIENCY-WISE.

17 BUT IT IS A LITTLE DIFFERENT ON THE DIRECT SIDE.

18 **THE COURT:** YES.

19 **MR. SAVERI:** YOUR HONOR, RICK SAVERI ON BEHALF OF THE  
20 DIRECT PURCHASERS. CRT, I'M LEAD COUNSEL IN CRT FOR THE DIRECT  
21 PURCHASERS. AND IN THERE WE HAD TWO BIG POTS OF MONEY. THE  
22 FIRST POT, BUT AS WE WERE MOVING ALONG TOWARD TRIAL AND WE SENT  
23 OUT CLAIM FORMS THERE, WE THEN BEGAN TO SETTLE SORT OF THE SECOND  
24 POT.

25 SO IT HAS BEEN APPROVED BY JUDGE TIGAR. THE MONEY'S ALL

1 GETTING COMBINED FOR A SINGLE POT TO BE DISTRIBUTE. BUT AS  
2 MR. SIMON SAID, YOU KNOW, WE HAVE DIRECT MAILING WITH THE CLASS.

3 WE HAVE THE CLASS NAMES, CLAIMS ADMINISTRATOR. WE'RE IN  
4 CONTACT WITH THEM. CLAIM FORMS ARE BEING SUBMITTED. AND IT ALL  
5 GETS DISTRIBUTED PRO RATA. SO THERE'S NO REMAINDER ON THE DIRECT  
6 PURCHASER SIDE.

7 THE OTHER THING OF WHY WE ALSO WANTED TO WAIT FOR ONE POT,  
8 ONE DISTRIBUTION IS THE AUDIT PROCESS, TOO, BECAUSE THERE'S A  
9 TENDENCY IN THE DIRECT PURCHASER CASES, YOU KNOW, A LOT OF CLAIMS  
10 WILL COME IN. AND SOMETIMES THERE'S A LOT OF PEOPLE PUTTING IN  
11 CLAIMS FOR ALL DIFFERENT TYPES OF PRODUCTS, AND SO YOU HAVE TO  
12 AUDIT THE CLAIMS. AND SOMETIMES THE AUDITS CAN BE COSTLY.

13 SO IF YOU HAVE DIFFERENT ROUNDS OF MULTIPLE CLAIM FORMS  
14 COMING IN THAT CAN DRIVE THE COSTS ON THE AUDIT.

15 IN DRAM I WAS LEAD COUNSEL FOR THE DIRECT PURCHASERS, IN  
16 DRAM. IN DRAM WE HAD TWO DISTRIBUTIONS, AS MR. FRIEDMAN SAID.  
17 YOU KNOW, THERE WAS ONE BIG POT OF MONEY. WE DID A CLAIMS  
18 PROCESS, AND THAT WAS DISTRIBUTED. AND THEN, WE HAD ANOTHER  
19 SETTLEMENTS LATER WITH THREE ADDITIONAL DEFENDANTS.

20 BUT -- AND THEN, I WAS IN SRAM ON THE EXECUTIVE COMMITTEE ON  
21 THE DIRECT PURCHASER SIDE, ALSO PRO RATA NORMAL CLAIMS  
22 DISTRIBUTION.

23 I'M LEAD COUNSEL IN THE ODD DIRECT PURCHASER LITIGATION.  
24 THERE WE ARE IN THE MIDDLE OF THE AUDITING OF THE CLAIMS PROCESS  
25 AND WE ARE DOING ONE DISTRIBUTION, YOUR HONOR.

1           **THE COURT:** SO THEN DO I TAKE IT -- MR. SIMON, DID YOU  
2 WANT TO SAY SOMETHING ELSE?

3           **MR. SIMON:** NO, I WAS JUST GOING TO SAY YOU ASKED A  
4 QUESTION ABOUT MONEY AND REDISTRIBUTIONS. TYPICALLY ALL THE  
5 MONEY, AS MR. SAVERI SUGGESTED, ON THE DIRECT SIDE IS GIVEN OUT.  
6 THERE MIGHT BE AT THE VERY END SOME UNCASHED CHECKS. I THINK IT  
7 WAS A VERY MINIMAL AMOUNT. THAT DOESN'T MAKE SENSE TO, YOU KNOW,  
8 ACTUALLY SEND IT BACK TO CLASS MEMBERS. AND THEN SOMETIMES A CY  
9 PRES IS ASKED FOR. BUT THERE'S NO CY PRES BUILT INTO PRO RATA  
10 ON THE DIRECT SIDE, AND I DON'T THINK NECESSARILY ON THE INDIRECT  
11 SIDE, EITHER.

12           **THE COURT:** SO YOU WERE GOING TO --

13           **MR. SAVERI:** NO, I JUST WANT TO -- I WAS GOING TO ADD  
14 ONE THING. IN ALL THESE CASES WHAT I THINK YOUR HONOR IS ASKING  
15 IS THERE ARE SETTLEMENTS ALL ALONG DURING THE PROCESS OF THE MDL,  
16 AND YOU BUILD THAT FUND OF MONEY.

17           AND AS MR. FRIEDMAN SAID YOU LOOK AT IT AS YOU GO TO SEE THE  
18 CRITICAL MASS. IS NOW A GOOD TIME, DEPENDING ON THE STATUS OF  
19 THE LITIGATION? OR DO YOU WAIT TO DO WHAT IS MOST EFFICIENT AND  
20 MOST BENEFICIAL FOR THE CLASS ON THE SIZE OF THE MONEY, THE  
21 PERIOD OF TIME OF THE LITIGATION, OR ARE THERE ONGOING  
22 SETTLEMENTS WITH OTHER DEFENDANTS IN THE WINGS OR ARE THERE  
23 OUTSTANDING MOTIONS?

24           SO YOU ASSESS IT AS YOU GO.

25           **THE COURT:** SO LET ME ASK THIS, THEN: YOU HAVE PROVIDED

1 ME WITH A SCHEDULE.

2 MR. FRIEDMAN: YES.

3 THE COURT: AND YOU'VE ALSO SAID THAT YOU ARE  
4 APPROACHING CRITICAL MASS.

5 MR. FRIEDMAN: YES.

6 THE COURT: BUT YOU DIDN'T SAY YOU WERE AT CRITICAL  
7 MASS. SO IF WE'RE NOT AT CRITICAL MASS YET, THEN, WHY ARE WE  
8 GOING THROUGH A PROCESS OF NOTIFICATION? WHEN DOES FINAL  
9 APPROVAL THEN COME AFTER WE HAVE AN INITIAL SENSE OF CLAIMS? AND  
10 IN LIGHT OF WHAT MR. SAVERI SAID, YOU KNOW, ARE THERE OTHER  
11 THINGS OUT THERE THAT I MAY BE HEARING OF AND DOES IT MAKE SENSE  
12 TO WAIT?

13 MR. FRIEDMAN: SO GREAT QUESTION. SO LET ME SEE IF I  
14 CAN PROVIDE SOME CLARITY TO THIS. THE IMPORTANCE -- SO THERE'S  
15 TWO COMPONENTS THAT WE'RE OPERATING WITH. ONE IS THE  
16 DISTRIBUTION, WHEN TO DISTRIBUTE. YOU OBVIOUSLY CAN'T DISTRIBUTE  
17 UNTIL IT'S BEEN APPROVED FINALLY.

18 AND SO THE AIM IS TO GET THROUGH THE PROCESS THAT WILL THEN  
19 ALLOW THE PARTIES AND THE COURTS TO ULTIMATELY DECIDE THE BEST  
20 TIME TO DISTRIBUTE. UNTIL WE GO THROUGH THAT PROCESS OF GETTING  
21 THE COURT'S FINAL APPROVAL, THE FINAL JUDGMENT, HAVING TO DEAL  
22 WITH OBJECTORS THAT ARE GOING TO COME IN, IN ALL OF THESE CASES.  
23 THAT'S ANOTHER ONE THAT WE SEE ALL THE TIME.

24 UNTIL WE GET THROUGH THAT PART OF THE FUNNEL, THEN  
25 DISTRIBUTION IS JUST SIMPLY THEORETICAL. AND SO THE GOAL IS TO

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1 TRY AND KEEP PUSHING THESE THROUGH THE MANUFACTURING LINE TO THE  
2 POINT WHERE THE COURT HAS WEIGHED IN ON THE FAIRNESS OF IT,  
3 HOPEFULLY GIVEN FINAL APPROVAL OF IT, AND THEN US PRESENTING TO  
4 THE COURT:

5 "YOUR HONOR, WE BELIEVE NOW IS AN EFFICIENT TIME TO  
6 DISTRIBUTE."

7 SO ALL ALONG -- AND HERE'S WHAT ENDS UP HAPPENING, YOUR  
8 HONOR, WHILE THIS IS HAPPENING. SO LET'S ASSUME HYPOTHETICALLY  
9 YOU GAVE PRELIMINARY APPROVAL. AND EVEN IF YOU -- YOU KNOW, SONY  
10 IS STILL PENDING. EVEN AT SOME POINT YOU APPROVED FINALLY SONY,  
11 AND THEN WE GET FINAL APPROVAL OF THESE SETTLEMENTS, ALONG THE  
12 WAY, WE'RE GOING TO BE EDUCATED AS TO IF THE COURT AGREES WITH,  
13 AT LEAST PRELIMINARILY, AND FINALLY WITH THESE THREE DEFENDANTS'  
14 SETTLEMENTS, WE'RE GOING TO KNOW WHETHER THERE'S ADDITIONAL  
15 SETTLEMENTS, WHETHER THE CLASS IS CERTIFIED OR NOT, WHETHER  
16 THERE'S NEGOTIATIONS.

17 I MEAN, THIS IS WHAT MR. SAVERI WAS SAYING. WE'RE GOING TO  
18 BE, AS WELL AS THE COURT IS GOING TO BE INFORMED HOW WE ARE  
19 PROGRESSING. THAT THEN TELLS US WHETHER TO DISTRIBUTE.

20 I'LL GIVE YOU ANOTHER EXAMPLE. SO IN THE LEAD IN THE  
21 ANIMATION CASE IN FRONT OF JUDGE KOH. SO WE HAD REACHED A POINT  
22 WHERE WE WERE GOING FOR PRELIMINARY APPROVAL OF A DEFENDANT. IT  
23 WAS THE SECOND TO LAST DEFENDANT. AND WE WERE ABOUT TO  
24 DISTRIBUTE THE OTHER SETTLEMENT MONEY. AND THEN, WE GOT  
25 AGREEMENT WITH THE SECOND TO LAST DEFENDANT.

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1           AND WE SAID TO JUDGE KOH:

2                 "WE'D LIKE TO HOLD OFF TO DISTRIBUTE BECAUSE WE'RE  
3           ABOUT TO GET ANOTHER, AND IT'S SIZABLE."

4           JUDGE KOH AGREED. SOON THEREAFTER WE ENTERED INTO THE FINAL  
5   SETTLEMENT WITH THE LAST DEFENDANT IN THE CASE, ANOTHER FAIRLY  
6   SIZABLE DEFENDANT.

7           SO AS WE GOT TO CRITICAL MASS WE WERE ABLE TO SEE IN REAL  
8   TIME:

9                 "OKAY. WE'RE ABOUT TO SETTLE WITH ANOTHER. WE'RE  
10           GOING TO HOLD OFF" -- VERSUS -- "WE'RE NOWHERE CLOSE," OR,  
11   YOU KNOW WE'RE AT ANOTHER STAGE.

12           SO THERE'S THESE MILESTONES IN THE CASE THAT FREQUENTLY  
13   ACCOMPANY WHETHER THE CASE IS GOING TO SETTLE WITH CERTAIN  
14   DEFENDANTS OR NOT.

15           AND WE HAVE THAT EXPERIENCE TO THEN ALLOW US TO SAY TO THE  
16   COURT:

17                 "YOUR HONOR, WE THINK IT'S TIME TO DISTRIBUTE."

18           AND THE COURT SAYS:

19                 "WHY NOW?"

20           AND WE SAY:

21                 "WE'RE NOT CLOSE IN ANY NEAR FUTURE TIME TO RESOLVING  
22   THIS ABSENT, YOU KNOW, SOMETHING UNUSUAL."

23           **THE COURT:** SO LET ME ASK THIS.

24           **MR. FRIEDMAN:** YES.

25           **THE COURT:** IF YOU ARE A CLASS MEMBER AND YOU HAVE A

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1 DEADLINE TO OPT-OUT, YOU HAVE TO HAVE ENOUGH INFORMATION TO MAKE  
2 A JUDGMENT CALL. FOR PROFESSIONAL OBJECTORS, YOU KNOW, THEY ARE  
3 GOING TO -- WHAT DO THEY DO? THEY TEND TO OBJECT ON THE BASIS OF  
4 LACK OF INFORMATION OR OTHER KINDS OF ROUTINE SETS OF OBJECTIONS  
5 THAT THEY MAKE.

6 SO WHAT IS IT THEN THAT YOU -- WHAT IS IT THAT YOU CAN THEN  
7 SAY NOW TO ANY OF THESE PEOPLE TO ALLOW THEM TO ENGAGE IN A  
8 MEANINGFUL WAY IN THE PROCESS?

9 AND DOES AN ORDER HAVE TO SAY -- AND BY THE WAY -- OR SHOULD  
10 THE ORDER JUST SAY:

11 "LOOK, I UNDERSTAND THAT." OKAY, AS I STARTED, RIGHT?

12 "HAPPY THAT PEOPLE ARE SETTling. LOOKING AT THE AMOUNTS.

13 LOOKING AT THE POTENTIAL PERCENTAGE RECOVERY, ET CETERA.

14 BUT EVERYTHING IS STILL UP IN THE AIR. SO THIS IS

15 TENTATIVELY APPROVED UNTIL WE KNOW MORE."

16 I MEAN, I'M STILL KIND OF STRUGGLING ON HOW WE CAN EVEN GO  
17 THROUGH ONE PHASE OF THIS WITHOUT A BIT MORE INFORMATION.

18 **MR. FRIEDMAN:** SO I APPRECIATE IT. AND THE COURT'S  
19 AGAIN PUTTING ITS FINGER RIGHT ON SORT OF A PARADOX. AND ONE OF  
20 THE THINGS I THINK THE COURT IS HIGHLIGHTING IS THE INFORMATION  
21 OF CLASS MEMBERS, RIGHT?

22 AND LET ME TAKE A COUPLE OF LAYERS OF THAT. ONE LAYER IS  
23 HOW MUCH: HOW MUCH AM I GOING TO GET, RIGHT? THAT'S JUST A  
24 BASIC QUESTION.

25 AND THERE'S TWO SCHOOLS. ONE IS A SCHOOL THAT SAYS, YOU

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1 KNOW:

2 "IT'S GOING TO BE PRO RATA. THEREFORE, WE CAN'T  
3 ESTIMATE IT."

4 ANOTHER IS TO GIVE A RANGE. AND WHAT HAPPENED IN MILK IN  
5 THE ANTITRUST CASE WITH JUDGE WHITE -- AND THIS IS SOMETHING THAT  
6 JUDGE WHITE HAD AN ISSUE WITH -- WE DID NOT, BECAUSE WE DON'T  
7 KNOW HOW MANY CLAIMANTS THERE ARE GOING TO BE.

8 AND SO FOR THESE GROUP OF SETTLEMENTS WE HAVE A FIXED  
9 NUMBER, YOUR HONOR, RIGHT? BECAUSE IF SOMEONE OPTS OUT OF THIS  
10 THEY CAN STILL BE IN ANOTHER SETTLEMENT IN THE FUTURE.

11 THEY ARE NOT -- WHEN SOMEONE OPTS OUT OR OBJECTS THAT  
12 DOESN'T AFFECT THEM FOR A LATER SETTLEMENT THAT OCCURS, RIGHT?  
13 JUST FOR THIS.

14 SO THEY KNOW. LET'S ASSUME THERE WAS \$64 MILLION POT HERE.  
15 SO IN NOTICE WE TELL THEM:

16 "THERE'S \$64,450,000." AND WHAT WE CAN EITHER SAY IS:

17 "YOU ARE GOING TO GET A PRO RATA AMOUNT. WE DON'T KNOW  
18 HOW MANY CLAIMANTS THERE IS GOING TO BE, SO WE CAN'T TELL  
19 YOU HOW MUCH MONEY YOU ARE GOING TO GET."

20 THE OTHER IS:

21 "WE'LL GIVE YOU AN ESTIMATE IN THE NOTICE."

22 WHAT JUDGE WHITE THEN HAD US DO WAS ON THE WEBSITE WE GIVE  
23 AN ESTIMATE. AND AS YOU GOT MORE AND MORE INFORMATION IN TERMS  
24 OF HOW MANY CLAIMANTS, WE STARTED ADJUSTING DOWN, BECAUSE IT WENT  
25 FROM 200,000 CLAIMANTS, WHERE WE SAID:

—



1 "YOU ARE GOING TO GET 40 TO \$80," TO FOUR MILLION. AND  
2 IT WAS THEN CHANGED TO BETWEEN FIVE AND TEN DOLLARS.

3 AND WE JUST KEPT ADJUSTING IT AND KEPT ADJUSTING IT. BUT  
4 YOU CAN'T REALLY -- YOU HAVE TO CHOOSE ONE OR THE OTHER IN TERMS  
5 OF THAT.

6 OR, YOUR HONOR, YOU CAN SAY:

7 "WELL, I'M ONLY GOING TO ULTIMATELY, WHEN THE WHOLE  
8 THING IS OVER, WHEN EVERYTHING IS OVER, THEN I'M GOING TO DO  
9 PRELIMINARY APPROVAL."

10 BUT THAT DOESN'T GET RID OF THE PROBLEM I'M TALKING ABOUT,  
11 YOUR HONOR, WHICH IS WE DON'T KNOW HOW MANY CLAIMANTS THERE ARE  
12 GOING TO BE. THAT'S WHY YOU PUT YOUR FINGER ON THE PARADOX WHICH  
13 WE WRESTLE WITH ALL THE TIME.

14 **THE COURT:** SO NOW LET'S GO TO THE FACT THAT YOU'VE  
15 GIVEN ME SPECIFIC DATES. THOSE REAL DATES OR NOT? AND I  
16 PROBABLY, BY THE WAY, NEED AN UPDATED -- YOU'RE ALSO ASKING THAT  
17 I DO THESE ALL KIND OF COLLECTIVELY TOGETHER. AND IT SEEMS TO ME  
18 IT WOULD BE HELPFUL TO HAVE A NEW PROPOSED FORM OF ORDER --

19 **MR. FRIEDMAN:** YES.

20 **THE COURT:** -- THAT ADDRESSES ALL OF THEM.

21 **MR. FRIEDMAN:** YES.

22 **THE COURT:** BUT IT'S NOT CLEAR -- IT'S NOT CLEAR TO ME  
23 THAT A NOTICE CAMPAIGN WOULD BEGIN IN ABOUT SIX WEEKS OR WOULD  
24 IT?

25 **MR. FRIEDMAN:** YES.

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1           **THE COURT:** SO HOW IS IT THEN THAT WE CAN HAVE A  
2 FAIRNESS HEARING IN AUGUST IF IT'S NOT CLEAR THAT THERE'S GOING  
3 TO BE A DISTRIBUTION BECAUSE IT'S NOT CLEAR THAT THERE'S CRITICAL  
4 MASS?

5           **MR. FRIEDMAN:** SO, YOUR HONOR, LET ME SEE IF I CAN  
6 UNTANGLE THAT A LITTLE BIT, IF I UNDERSTAND IT.

7           THERE WILL BE A DISTRIBUTION. THE ISSUE IS WHEN, RIGHT?  
8 SO --

9           **THE COURT:** RIGHT. BUT I CAN'T -- I CAN'T APPROVE A  
10 FINAL -- I CAN'T GIVE FINAL APPROVAL UNLESS I KNOW ULTIMATELY  
11 WHAT THE PROCESS IS, WHETHER THERE ARE OPT-OUTS. I MEAN, THERE'S  
12 A LOT OF INFORMATION THAT I DON'T KNOW AT A PRELIMINARY STAGE  
13 THAT I'M GOING TO HAVE TO KNOW AT A FINAL STAGE.

14           AND EVEN HERE YOU'VE GOT A CLOSE OF CLAIMS PERIOD TWO MONTHS  
15 AFTER THE FAIRNESS HEARING.

16           **MR. FRIEDMAN:** YES.

17           **THE COURT:** SO HOW AM I -- HOW AM I SUPPOSED TO ASSESS  
18 THAT?

19           **MR. FRIEDMAN:** SO, YOUR HONOR, LET ME AGAIN -- YOU WILL  
20 KNOW THE OPT-OUTS BECAUSE WE HAVE -- THERE WILL BE OPT-OUTS AHEAD  
21 OF TIME, JUST LIKE IN EVERY CLASS ACTION. YOU'LL HAVE A DEADLINE  
22 BEFORE THE FAIRNESS HEARING, SO THAT IS NORMAL. AND YOU WILL  
23 KNOW WHO THE OBJECTORS ARE AND WHO THE OPT-OUTS ARE FOR THIS  
24 GROUP.

25           THAT IS FAIRLY STRAIGHTFORWARD. I DO BELIEVE IN TERMS OF --

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1 YOU ARE ABSOLUTELY RIGHT, AND I WANT TO THINK ABOUT IT IN TERMS  
2 OF WHETHER WE SHOULD PROPOSE TO YOU AND INCLUDE IN THE NOTICE THE  
3 PROPOSED FORM AND PROCEDURE OF DISTRIBUTION, SO THAT IN YOUR  
4 PRELIMINARY APPROVAL AND IN THE NOTICE THAT WE HAVE MORE DETAIL  
5 ON THAT ISSUE.

6 I THINK -- I THINK THAT I'D LIKE TO THINK ABOUT THAT AND  
7 RESPOND TO THE COURT IN TERMS OF A SUGGESTION ON THAT BECAUSE I  
8 DO THINK THAT THAT MAY BE AN ISSUE THAT I WANT TO HAVE THE COURT  
9 ASSESS PRELIMINARILY. AND THAT IT IS SUFFICIENT -- MAKING SURE  
10 IT IS SUFFICIENT IN THE NOTICE. AND I DON'T KNOW THAT IT IS  
11 RIGHT NOW.

12 **THE COURT:** WELL, IT'S PRETTY SPARSE RIGHT NOW.

13 **MR. FRIEDMAN:** AGREED. SO I WOULD ASK -- I WOULD ASK  
14 FOR THAT BECAUSE I THINK THE COURT HAS PUT ITS FINGER ON AN ISSUE  
15 THAT HAS NOT -- IN THIS CASE HAS NOT CAUGHT UP TO IT BECAUSE OF  
16 MUCH OF DOING IT IN MILK.

17 AND SO I THINK WE NEED TO THINK ABOUT THAT AND PRESENT IT TO  
18 THE COURT FOR THE COURT TO CONSIDER NOW AS OPPOSED TO DOWN THE  
19 ROAD. AND THAT WON'T TAKE US A LONG TIME TO PRESENT TO THE  
20 COURT.

21 **THE COURT:** OKAY. AND WHAT ABOUT THE OTHER ISSUE OF  
22 HAVING A FINAL DECISION WITHOUT, IN FACT, HAVING A DECISION ON  
23 DISTRIBUTION?

24 **MR. FRIEDMAN:** IN TERMS OF WHEN TO DISTRIBUTE? IS THAT  
25 THE COURT'S QUESTION?

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1           **THE COURT:** CORRECT.

2           **MR. FRIEDMAN:** IF WE DON'T HAVE A FINAL DECISION ON  
3 WHEN WE DISTRIBUTE?

4           **THE COURT:** WELL, NOT JUST ON WHEN. I MEAN, AND  
5 PERHAPS IT DEPENDS ON WHETHER THIS ELECTRONIC, THIS NEW APPROACH  
6 IS AN EFFICIENT WAY TO DO IT. BUT IT SEEMS TO ME THAT YOU, AS  
7 CLASS COUNSEL, NEED TO KNOW IF -- WHAT I DON'T WANT TO DO IS GET  
8 TO THE POINT -- AND IT MAKES IT COMPLICATED. AND WHEN I'VE HAD  
9 TO DO IT, I'VE DONE IT. I PRELIMINARILY APPROVE SOMETHING, AND  
10 THEN WE GET TO THE FINAL AND ALL SORTS OF THINGS HAVE GOTTEN  
11 SCREWED UP.

12           THE PROCESS DIDN'T WORK. THE CLAIMS NUMBERS DIDN'T COME IN  
13 THE WAY WE WANTED, ET CETERA. AND SO WITH THAT INFORMATION I  
14 ULTIMATELY SOMETIMES HAVE TO SAY:

15           "SORRY."

16           **MR. FRIEDMAN:** RIGHT.

17           **THE COURT:** "NO FINAL APPROVAL. GO BACK TO THE DRAWING  
18 BOARD."

19           YOU KNOW, AND SO PERHAPS THAT'S WHAT YOU'RE THINKING WITH  
20 RESPECT TO THE THIS. I CAN TELL YOU STILL I HAVEN'T EVEN GOTTEN  
21 TO IT. THERE'S THE ISSUE WITH ATTORNEY'S FEES AND HOW ALL OF  
22 THAT GETS SLICED AND DICED GIVEN THAT THERE'S STILL WORK BEING  
23 DONE, SUBSTANTIAL AMOUNTS OF WORK BEING DONE. THERE'S MORE  
24 DEFENDANTS. EVERYONE IS JOINT AND SEVERALLY LIABLE, ET CETERA.  
25 SO THAT'S A WHOLLY SEPARATE ISSUE.

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1 BUT IF YOU KNOW TODAY THAT, YOU KNOW, IT'S SIXTY-FOUR  
2 FOUR-FIFTY YOU'RE NOT -- WE'RE NOT READY TO DISTRIBUTE, THEN WHY  
3 ARE WE GOING THROUGH -- WHY ARE SPENDING THE MONEY TO GO THROUGH  
4 THIS CLAIMS PROCESS?

5 MR. FRIEDMAN: SO, YOUR HONOR, A COUPLE OF THINGS. ONE  
6 IS AT SIXTY-FOUR FOUR-FIFTY, IF I PRESENT TO YOU WHAT I BELIEVE I  
7 WILL BE PRESENTING TO YOU, WHICH IS FOR ELECTRONIC DISTRIBUTION,  
8 THEN THE EFFICIENCY BEHIND ELECTRONIC DISTRIBUTION, WHICH IS WHY  
9 I'VE PUSHED REALLY HARD FOR IT, MAKES DISTRIBUTION VERY FEASIBLE  
10 IN NOT HAVING TO WAIT.

11 THE COURT: AT SIXTY-FOUR FOUR-FIFTY.

12 MR. FRIEDMAN: ABSOLUTELY.

13 THE COURT: OKAY.

14 MR. FRIEDMAN: ABSOLUTELY.

15 THE COURT: SO THAT'S A LITTLE BIT DIFFERENT THAN  
16 SAYING:

17 "WE'RE NOT YET AT CRITICAL MASS."

18 MR. FRIEDMAN: ABSOLUTELY.

19 THE COURT: ALL RIGHT.

20 MR. FRIEDMAN: AND, AGAIN, I JUST DON'T WANT TO  
21 OVERPROMISE BECAUSE I'M WATCHING IT IN REAL TIME HAPPENING IN THE  
22 MILK ANTITRUST CASE. AND I'M GUARDEDLY OPTIMISTIC THAT IT'S  
23 WORKING. AND YET IT IS THE PILOT.

24 AND SO WHEN WE CAME IN HERE AND FILED FOR PRELIMINARY  
25 APPROVAL I'M NOT SAYING WE DID IT PREMATURELY ON ANY OF THESE,

1 BUT IT'S BEEN A -- IT'S GONE ON IN REAL TIME IN A COURTROOM VERY  
2 CLOSE TO YOU.

3 SO BUT I'M ANTICIPATING COMING BEFORE YOU AND SAYING:

4 "YOUR HONOR, WE WANT TO USE ELECTRONIC DISTRIBUTION.  
5 WE BELIEVE WE ARE EFFICIENTLY GOING TO BE ABLE TO DO IT.  
6 SIXTY-FOUR FOUR-FIFTY IS ENOUGH MONEY TO DO IT. WE'D LIKE  
7 TO DO IT. AND, IN FACT, HOPEFULLY, YOU KNOW, AT THE END OF  
8 THE DAY, WE'LL SAY DISTRIBUTION IS GOING TO HAPPEN SOON  
9 AFTER WE GET FINAL APPROVAL AND IT BECOMES FINAL. AND BY  
10 THE WAY, WE'RE ALSO SEEING VISIBILITY THAT WE'RE GOING TO  
11 ASK YOU TO HOLD OFF BECAUSE WE HAVE ANOTHER SETTLEMENT OF  
12 SIZABLE AMOUNT THAT WE'RE GOING TO ADD TO THE POT. AND  
13 THEN, WE'LL DECIDE AT THAT POINT IN TIME WHETHER WE HOLD  
14 OFF OR NOT."

15 **THE COURT:** SO IS THERE ANYTHING ELSE IN THE WORKS OR  
16 NOT?

17 **MR. FRIEDMAN:** YOUR HONOR, I THINK IN TERMS OF WHAT I  
18 CAN SAY IS THAT WE ARE -- WE ARE -- FROM PLAINTIFFS' PERSPECTIVE  
19 WE ARE GOING -- WE'RE MAKING EFFORTS TO SEE IF RESOLUTION CAN  
20 OCCUR NEAR TERM. WE'RE MAKING THOSE EFFORTS CURRENTLY, NEAR  
21 TERM, YOUR HONOR.

22 **THE COURT:** WE DIDN'T TALK ABOUT CLOSING THE CLAIMS  
23 PERIOD BEFORE OR AFTER THE FAIRNESS HEARING. USUALLY, AGAIN, I  
24 WOULD HAVE ALL THE NUMBERS BEFORE DOING A FINAL APPROVAL.

25 **MR. FRIEDMAN:** SO THE COURT'S HITTING ON EVERY SINGLE

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1 PET ISSUE THAT I HAVE IN CLASS ACTIONS DOWN THE LINE. SO THE LAW  
2 IN THE NINTH CIRCUIT, UNLESS IT GETS CHANGED BY ACTS OF CONGRESS  
3 AFOOT, IS THAT YOU LOOK AT THE AMOUNT OF MONEY MADE AVAILABLE.  
4 IT'S NOT A COUPON SETTLEMENT AND MONEY IS NOT REVERTING. THERE'S  
5 NO REVERTING TO ANY DEFENDANTS.

6 AND SO YOU LOOK AT THE AMOUNT OF MONEY THAT IS MADE  
7 AVAILABLE TO CLASS MEMBERS. AND IF THAT AMOUNT OF MONEY ENDS UP  
8 GOING TO CLASS MEMBERS OR ECHEATS OR GOES TO CY PRES, THEN THAT  
9 DOES NOT REFLECT ON THE COURT'S ULTIMATE DECISION.

10 NOW, AGAIN, THERE'S PLENTY OF SETTLEMENTS THAT ARE  
11 CONSTRUCTED IN A WAY THAT'S DOESN'T HAVE A CHANCE OF GOING TO  
12 CLASS MEMBERS. AND THE COURT, OF COURSE, LOOKS AT THAT AND SAYS  
13 WHETHER OR NOT THAT WAS NOT A MEANINGFUL RESULT FOR ANY CLASS  
14 MEMBERS.

15 THAT IS DIFFERENT, YOUR HONOR, THAN WHAT WE'RE TALKING ABOUT  
16 IN THIS TYPE OF CASE WHERE YOU WILL RUN INTO THE PROBLEM WHETHER  
17 WE GOT A HUNDRED MILLION DOLLARS OR A BILLION DOLLARS,  
18 IT'S -- THAT DOESN'T REFLECT ON THE -- IT DOES NOT REFLECT ON THE  
19 QUALITY OF THE RESULT.

20 IT REFLECTS ON THE CLAIMS RATE WHICH IS THE PROBLEM THAT  
21 I'VE DESCRIBED TO YOU. IT HAPPENS IN EVERY CLASS CASE. AND  
22 THAT'S WHY THE COURTS IN THE NINTH CIRCUIT IN BOEING HAVE SAID:

23 "YOU LOOK AT WHAT IS MADE AVAILABLE."

24 WE'RE GOING TO DO OUR BEST, AS I'VE SCRIBBLED TO YOU, TO TRY  
25 AND DISTRIBUTE EVERY SINGLE DOLLAR TO CLASS MEMBERS. BUT LET ME

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1 RAISE ONE OTHER ISSUE WITH THE COURT, WHICH IS, YOU KNOW, THERE  
2 ARE COURTS THAT HAVE SAID YOU CAN HAVE A CLAIMS RATE -- AND I'M  
3 SORT OF ALLUDING TO THIS IN LCD OR SOME OF THESE OTHER CASES. I  
4 WASN'T THERE, BUT YOU CAN HAVE A CLAIMS RATE THAT IS LOW THAT  
5 RESULTS IN CLASS MEMBERS WHO WERE INJURED GETTING WHAT PEOPLE  
6 CALL "A WINDFALL." THEY GOT MORE THAN TREBLE DAMAGES.

7 BUT SO THEIR TREBLE DAMAGES MAY HAVE BEEN \$50. AND THEY END  
8 UP GETTING, IF WE'RE ALLOWED TO, \$300.

9 **THE COURT:** OKAY. BUT SO THE LAW DOESN'T REQUIRE IT.

10 **MR. FRIEDMAN:** CORRECT.

11 **THE COURT:** SO WHAT? THAT DOESN'T EXPLAIN WHY I WOULD  
12 DEPART FROM A NORMAL PRACTICE AND HAVE EVERYTHING IN FRONT OF ME  
13 BEFORE I DO A FINAL APPROVAL.

14 **MR. FRIEDMAN:** YOU'RE JUST TALKING ABOUT THE CLAIMS  
15 RATE?

16 **THE COURT:** I'M TALKING ABOUT THE CLOSE OF THE CLAIMS  
17 PERIOD.

18 **MR. FRIEDMAN:** SO, YOUR HONOR, I HAVE TO TELL YOU THAT  
19 NOT QUESTIONING YOUR NORMAL PRACTICE, BUT THERE'S A LOT OF  
20 PRACTICES, MY E BOOKS CASE IN FRONT OF JUDGE WHITE, WHERE THE  
21 CLAIMS RATE HAS GONE PAST THE FINAL APPROVAL POINT.

22 SO THAT IS --

23 **THE COURT:** WHAT WOULD BE THE BENEFIT? WHAT'S THE  
24 BENEFIT OF THAT? IF JUDGES ARE MAKING CHOICES --

25 **MR. FRIEDMAN:** SURE.



1           **THE COURT:** -- THEN WHY WOULD YOU GOING GO -- BECAUSE  
2 IT DOESN'T REALLY MATTER, RIGHT? YOU HAVE IT -- LET'S SAY RIGHT  
3 NOW YOU HAVE IT SEPTEMBER 30TH. SO I HAVE A HEARING ON, YOU  
4 KNOW, OCTOBER 6. I MEAN, WHAT DOES IT MATTER? WHAT ARE THE PROS  
5 AND CONS OF DOING THIS APPROACH HAS OPPOSED TO JUST WAITING?

6           **MR. FRIEDMAN:** FOR THE FINAL APPROVAL TO OCCUR AFTER  
7 THE CLOSE? YOU CLEARLY CAN DO THAT, YOUR HONOR. THE PROS IS  
8 THAT YOU CAN EXTEND THE CLAIMS PERIOD LONGER TO GIVE MORE PEOPLE  
9 OPPORTUNITY TO CLAIM. THAT IS ALLOWING A LONGER CLAIMS RATE  
10 PERIOD. IT POTENTIALLY INCREASES COSTS.

11           **THE COURT:** I'M JUST TRYING TO UNDERSTAND WHY JUDGES  
12 WOULD HAVE FINAL APPROVAL BEFORE THE CLOSE OF -- I'M TRYING TO  
13 UNDERSTAND THE LOGIC.

14           **MR. FRIEDMAN:** I UNDERSTAND.

15           **THE COURT:** IF IT'S NOT -- IF IT'S NOT REQUIRED BY LAW,  
16 I'M TRYING TO UNDERSTAND THE LOGIC. AND I DON'T SEE THE LOGIC  
17 QUITE YET.

18           **MR. FRIEDMAN:** OKAY. YOUR HONOR, WHAT I'M DOING A BAD  
19 JOB EXPLAINING IT IS THAT IN -- YOU CAN SET THE CLOSE OF THE  
20 CLAIMS RATE BEFORE THE FINAL APPROVAL HEARING, ABSOLUTELY. YOU  
21 CAN SET IT AFTER.

22           THERE'S NO LEGAL REQUIREMENT EITHER WAY. IF THE COURT  
23 BELIEVES IT WANTS WHAT THE FINAL NUMBER IS BEFORE IT MAKES AN  
24 ASSESSMENT, COURT CAN DO THAT.

25           AND WHAT I WAS SIMPLY TRYING TO ARTICULATE IS THAT IN TERMS

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1 OF WHETHER IT'S FAIR OR NOT, THE SETTLEMENT, WHICH IS WHAT YOU'RE  
2 DECIDING, IS ONE IN WHICH --

3 **THE COURT:** AND THAT WAS HELPFUL. I JUST -- WE ALL DO  
4 THINGS SLIGHTLY DIFFERENTLY. SOMETIMES THERE'S NO REASON.  
5 SOMETIMES IT'S PERSONAL PREFERENCE.

6 **MR. FRIEDMAN:** RIGHT.

7 **THE COURT:** AND I'M TRYING TO FIGURE OUT IF THERE'S  
8 SOME LOGICAL REASON FOR DOING IT ONE WAY VERSUS THE OTHER. NOW,  
9 OBVIOUSLY, IF IT WAS A COUPON SETTLEMENT WHICH ARE HIGHLY, YOU  
10 KNOW, DISFAVORED, YOU NEED TO KNOW.

11 **MR. FRIEDMAN:** ABSOLUTELY.

12 **THE COURT:** BUT -- AND PERHAPS THAT'S WHY I'M USED TO  
13 DOING IT THAT WAY JUST BECAUSE, YOU KNOW, IT'S A NORMAL PRACTICE  
14 IN CERTAIN KINDS OF CASES.

15 **MR. FRIEDMAN:** THE ONLY REASON, YOUR HONOR, IS IF YOU  
16 WANTED TO HAVE A FINAL APPROVAL THAT THEN WOULD MAKE THE CASE  
17 FINAL, AND THEN YOU COULD HAVE DISTRIBUTION SOONER. AND,  
18 THEREFORE, YOU WOULD WANT TO HAVE THE CLAIMS RATE EARLIER IF YOU  
19 WANT THAT INFORMATION. AND ALL THIS PROPOSAL DOES IS GIVE A  
20 LONGER PERIOD FOR PEOPLE TO CLAIM. THAT'S IT.

21 **THE COURT:** LET ME ASK THIS: DO YOU FIND IN TERMS OF  
22 RESPONSIVENESS THAT IN THESE KINDS OF CASES YOU NEED A CERTAIN  
23 LENGTH OF PERIOD SO THAT PEOPLE ACTUALLY, YOU KNOW -- OR ARE MOST  
24 CONSUMERS JUST LIKE LAWYERS AND THEY WAIT UNTIL THE LAST MINUTE  
25 ANYWAY?

1                   **MR. FRIEDMAN:** SO, HERE'S -- THE ANSWER IS YOU DON'T --  
2 YOU DON'T GET A HOCKEY STICK, BECAUSE A LOT OF TIMES THIS PIECE  
3 OF INFORMATION IT'S NOT A BIG ENOUGH DEAL THAT PEOPLE PUT IT IN  
4 THEIR POCKET AND SAY:

5                   "I'M GOING TO WAIT 90 DAYS TO THEN FILL OUT THIS FORM  
6 FOR THE \$5 OR \$15 OR \$20." PEOPLE'S BEHAVIOR DOESN'T -- WE  
7 DON'T SEE THAT IN THE DATA. I HAVEN'T SEEN THAT AS A  
8 CONSISTENCY.

9                   WHAT WE'VE SEEN, YOUR HONOR, MOSTLY THAT DRIVES -- AND THIS  
10 WAS THE PILOT CASE AND THE USE CASE THAT HAPPENED THAT WENT FROM  
11 \$200,000 THAT HAD MANY MONTHS TO FOUR MILLION, WAS THAT THEY ARE  
12 GETTING BETTER.

13                  SOME OUTFITS, ADMINISTRATORS ARE GETTING BETTER AT USING  
14 SOCIAL MEDIA IN WAYS THAT GENERATES INTEREST AND LIKES AND POKES  
15 AND ALL OF THOSE THINGS THAT HAPPEN. AND THAT WHAT ENDED UP  
16 HAPPENING THAT WE WERE ABLE TO TRACE IS THAT ON FACEBOOK THEY  
17 WERE ABLE TO SEED AN AREA WHICH GOT PICKED UP BY LOCAL NEWS  
18 CONSUMER REPORTS.

19                  AND THOSE CONSUMER REPORTS WERE POSTED ON IN IOWA, IN  
20 ILLINOIS, AND AT VARIOUS LOCAL NEWS WEBSITES POSTED.

21                  AND THEY POSTED THE LINK, YOUR HONOR, TO THE WEBSITE WITH  
22 THE CLAIM FORM. AND THAT DROVE -- IT WAS AN UNBELIEVABLE AMOUNT  
23 OF TRAFFIC THAT DROVE CLAIMS 20-FOLD FROM 200,000 TO FOUR MILLION  
24 JUST ON THAT.

25                  AND SO IT'S THOSE TYPE OF THINGS THAT ARE DRIVING THE

1 ABILITY TO -- WHICH IS WHAT WE'RE TRYING TO DO: DRIVE UP CLAIMS  
2 AND DISTRIBUTION. IT'S THOSE TYPE OF SORT OF MORE ELECTRONIC  
3 LEARNING THAT IS HAPPENING THAN ANYTHING ELSE THAT WE'RE SEEING.

4 **THE COURT:** SO UNDER THIS PROPOSAL, YOU HAVE  
5 FIVE-AND-A-HALF MONTHS FOR A CLAIMS PERIOD. IS THERE MAGIC TO  
6 THAT AMOUNT?

7 **MR. FRIEDMAN:** NO.

8 **THE COURT:** WHAT WOULD YOU SAY IS THE SHORTEST AND WHAT  
9 IS THE LONGEST?

10 **MR. FRIEDMAN:** SO, YOUR HONOR, I'M THINKING. I THINK  
11 BETWEEN THREE MONTHS AND SEVEN MONTHS, SORT OF THE THREE TO SIX  
12 MONTHS WHAT IS I'VE SEEN.

13 THOSE ARE SORT OF THE BRACKETS IN THE MEDIAN OR THE AVERAGE,  
14 I SHOULD SAY, THE MEAN.

15 **THE COURT:** OKAY. AND THEN, THE CY PRES, THIS IS GOING  
16 TO THE STATE GOVERNMENTS, IS THAT --

17 **MR. FRIEDMAN:** I THINK IT'S A ESCHEATING, YOUR HONOR.

18 **THE COURT:** OH, OKAY.

19 **MR. FRIEDMAN:** I BELIEVE IT'S ESCHEATING. RIGHT?

20 **THE COURT:** AND THE 750,000 ADMIN COSTS THAT'S ACROSS  
21 ALL OF THEM? THAT'S THE ESTIMATE?

22 **MR. FRIEDMAN:** YES. NOW, THAT DOES NOT INCLUDE  
23 DISTRIBUTION, YOUR HONOR, WHICH IS WHAT I WANT TO GO AND WORK  
24 OUT --

25 **THE COURT:** OKAY.

1           **MR. FRIEDMAN:** -- TO DEAL WITH THIS, WHICH IS THE ISSUE  
2 THAT WE'RE TALKING ABOUT.

3           **THE COURT:** HOW LONG IS THE CLAIM PERIOD IN THE MILK  
4 CASE?

5           **MR. FRIEDMAN:** I WAS JUST THINKING ABOUT THAT, YOUR  
6 HONOR. I BELIEVE -- AND, AGAIN, CLAIM PERIOD JUST CLOSED  
7 JANUARY 31ST. THE FINAL APPROVAL, I BELIEVE, WAS DECEMBER 16.  
8 SO IT WAS FINAL APPROVAL, AND THEN WE HAD A MONTH-AND-A-HALF LAG.  
9 I WANT TO SAY THE CLAIM PERIOD WAS FOUR MONTHS?

10           MR. EIMER, ABOUT?

11           **MR. EMIER:** ABOUT THAT, YES, SIR.

12           **MR. FRIEDMAN:** IT WAS ABOUT FOUR MONTHS, YOUR HONOR.  
13 WE HAD PRELIMINARY APPROVAL, AND THEN A SIMILAR TYPE  
14 SCHEDULE. SO IT WAS BETWEEN FOUR AND FIVE MONTHS, YOUR HONOR.

15           **THE COURT:** DO I TAKE IT THAT DEFENDANTS AT THIS POINT  
16 HAVE YOU BEEN WAITING? THAT IS DISCOVERY IS ON HOLD, ET CETERA?  
17 SO APPROVING THE SETTLEMENT WOULD BE HELPFUL FOR THE DEFENDANTS  
18 IN THAT REGARD?

19           **MR. EMIER:** YOUR HONOR, ON BEHALF OF THE LG DEFENDANTS,  
20 THAT'S CORRECT. ONE OF THE PRIME MOTIVATORS FOR THE DEFENDANTS  
21 OF SETTLING A CASE IS TO HAVE THE EXPENSE AND DISRUPTION OF THE  
22 CASE END. AND SO GETTING THE PRELIMINARY APPROVAL AND THE FINAL  
23 APPROVAL ARE OBVIOUSLY IMPORTANT MOTIVATORS TO GETTING A CASE  
24 SETTLED.

25           **THE COURT:** YOU DON'T WANT TO COME AND TRY THIS ONE?

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1           **MR. EMIER:** YOU'RE WELCOME TO DO THAT, BUT I HAVE A  
2 FEELING THERE ARE OTHERS WHO PREFER NOT.

3           **THE COURT:** ALL RIGHT. SO HOW MUCH TIME, THEN, WOULD  
4 YOU WANT TO GET BACK TO ME ON DISTRIBUTION, THE REVISED PROPOSED  
5 FORM OF ORDER, ET CETERA?

6           **MR. FRIEDMAN:** YOUR HONOR, TWO WEEKS, I THINK, WOULD BE  
7 SUFFICIENT, IF THAT'S ACCEPTABLE TO THE COURT AND DEFENDANTS,  
8 OBVIOUSLY.

9           **MR. EMIER:** THAT'S FINE, YOUR HONOR.

10          **MR. FRIEDMAN:** AND I'M HAPPY TO TALK TO THE DEFENDANTS  
11 ABOUT THIS, AS WELL.

12          **MR. EMIER:** MR. FRIEDMAN AND I HAVE WORKED THESE THINGS  
13 OUT PRETTY QUICKLY BEFORE, AND AS THE MILK EXAMPLE SHOWS IT'S  
14 QUITE STRAIGHTFORWARD.

15          **THE COURT:** OKAY. ALL RIGHT. WELL, LET'S SEE. TWO  
16 WEEKS WOULD BE MARCH 14TH.

17          SO WHAT I WILL DO IS I WILL CONTINUE THIS HEARING TO MARCH  
18 21ST.

19          FILE SOMETHING BY THE 14TH. AND I CAN TAKE IT OFF CALENDAR  
20 UNLESS YOU CAN'T MAKE IT. BUT I WOULD SAY IN CASE I HAVE  
21 QUESTIONS I WANT TO HAVE SOMETHING ON THE CALENDAR.

22          **MR. FRIEDMAN:** SO, YOUR HONOR, I'M IN NEW YORK  
23 DEPOSITION ON THE 21ST. THAT WEEK I'M BASICALLY OUT. EITHER  
24 BEFORE THAT WEEK OR AFTER THAT WEEK.

25          **THE COURT:** WE CAN DO IT ON IT IS 14TH, IF YOU CAN GET

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1 IT TO ME IN ADVANCE.

2 **MR. FRIEDMAN:** LET ME TRY AND DO THAT. HOW ABOUT WE  
3 PUT IT ON THE 14TH, AND I'LL DO MY BEST TO GET IT TO YOU IN -- MY  
4 GOAL IS AT LEAST THREE DAYS BEFORE.

5 **THE COURT:** HOW ABOUT BY THURSDAY, THE 9TH.

6 **MR. FRIEDMAN:** BY THE 9TH? YES, YOUR HONOR.

7 **THE COURT:** AND THAT WAY, AGAIN, IF I LOOK AT IT AND I  
8 DON'T HAVE QUESTIONS, THEN YOU'LL JUST GET AN ORDER TAKING IT OFF  
9 CALENDAR.

10 BUT AT LEAST THIS WAY WE'VE GOT -- I KNOW EVERYBODY IS  
11 BUSY -- WE HAVE SOMETHING ON THE CALENDAR.

12 ANYBODY ELSE WANT TO SAY ANYTHING ELSE ON THE DEFENSE SIDE?  
13 NO?

14 ON PLAINTIFFS' SIDE?

15 **MR. EMIER:** NO, YOUR HONOR.

16 **THE COURT:** WELL, THANK YOU VERY MUCH. I APPRECIATE  
17 IT. IT IS -- IT'S A STICKY PROBLEM, AND IT'S HELPFUL TO HAVE  
18 KIND OF THE KIND OF MORE GLOBAL INFORMATION TO START THINKING  
19 ABOUT IT.

20 AND, FRANKLY, IT SOUNDS LIKE A REALLY INTERESTING PROCESS  
21 THAT YOU HAVE GOING IN THIS MILK CASE. BECAUSE WE CERTAINLY -- I  
22 KNOW I CERTAINLY GET FRUSTRATED WITH LOW CLAIMS RATES.

23 AND, YOU KNOW, THE GOAL, ON THE ONE HAND WE WRITE ALL ABOUT  
24 HOW THE GOAL OF THESE CLASS ACTIONS IS TO HELP THE CONSUMER, OR  
25 AT LEAST, YOU KNOW, AT LEAST THAT'S ONE OF THE GOALS.

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1 BUT WHEN WE AREN'T REACHING THEM, IT MAKES ONE WONDER.

2 SO I LOOK FORWARD TO SEEING THE UPDATED PROPOSAL AND PUT YOU  
3 ON, LIKE I SAID THE CALENDAR.

4 WE'LL CONTINUE THIS UNTIL MARCH 14.

5 IF I DON'T HAVE ANY QUESTIONS YOU'LL HEAR FROM ME IN  
6 WRITING.

7 **MR. FRIEDMAN:** GREAT, YOUR HONOR. APPRECIATE IT.

8 **THE COURT:** THANK YOU. HAVE A GOOD DAY.

9 (THEREUPON, THIS HEARING WAS CONCLUDED.)

10 STENOGRAPHY CERTIFICATION

11 "I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
12 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."  
13 MARCH 4, 2017  
KATHERINE WYATT

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